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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,210	07/16/2001	Mario Paleari	D-42992-01	4321

28236 7590 02/06/2003

CRYOVAC, INC.
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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,210

Applicant(s)

PALEARI ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days; a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

NEW REJECTIONS

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 11 – 20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase ‘wherein all of the layers of the film are oriented’ does not appear in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11 – 13 and 16 – 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Speer et al. (U.S. Patent No. 5,350,622).

With regard to Claims 11 – 13, Speer et al disclose a multi – layer heat shrinkable film (column 12, lines 4 – 21) comprising an outer layer heat – sealing layer comprising a polyolefin (column 11, lines 33 – 40), an outer abuse layer comprising a polyamide (column 12, lines 1 – 3) and an intermediate gas barrier layer comprising polyvinylidene chloride (column 11, lines 67 –

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68); with regard to the claimed aspect of the polyamide melting point being greater than 175 degrees Celsius, Speer et al teach the use of nylon 6/12 as the polyamide layer (column 8, lines 5 – 10); a melting point of greater than 175 degrees Celsius is therefore inherent to Speer et al.

With regard to Claims 16 – 18, the heat sealing layer comprises an ethylene – alpha olefin copolymer having a density less than or equal to 0.915 g/cm^3 (low density polyethylene; column 8, lines 49 – 68); the claimed aspect of the melting point being less than 140 degrees Celsius therefore reads on Speer et al.

With regard to Claim 19, the film is in the form of a tubing (column 12, lines 4 – 21) where the heat – sealing layer is the innermost layer of the tube (column 11, lines 54 – 60) With regard to the claimed aspect of the tubing being ‘seamless,’ Speer et al do not disclose a tubing having seams; the claimed aspect of the tubing being ‘seamless’ therefore reads on Speer et al.

With regard to Claim 20, the film is made into a container (a bag, therefore involving the seal layer; column 13, lines 55 – 58) having the sealing layer as the inside layer and the abuse layer as the outside layer (column 11, lines 54 – 60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 14 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al (U.S. Patent No. 5,350,622 in view of Arita et al (U.S. Patent No. 4,652,490).

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Speer et al disclose a heat shrinkable film comprising an outer polyamide layer as discussed above. With regard to Claim 14, Speer et al fail to disclose a polyamide layer which is blended with ethylene – vinyl alcohol.

Arita et al teach that polyamide blended with ethylene – vinyl alcohol is equivalent to polyamide as a layer in a heat shrinkable film (column 2, lines 30 – 52) for the purpose of making a film having superior heat shrinkability (column 2, lines 16 – 20). The desirability of blending polyamide with ethylene – vinyl alcohol in Speer et al, which is a heat shrinkable film, would therefore have been obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art to have provided for a polyamide layer which is blended with ethylene – vinyl alcohol in Speer et al in order to make a film having superior heat shrinkability as taught by Arita et al.

With regard to Claim 15, Arita et al fail to teach a blend comprising 3 – 40% ethylene – vinyl alcohol by weight. However, Arita et al teach a blend comprising 1% ethylene – vinyl alcohol by weight (the polyamide is blended with ethylene – vinyl alcohol; column 2, lines 30 – 52). Therefore, the amount of ethylene – vinyl alcohol would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the amount of ethylene – vinyl alcohol, since the amount of ethylene – vinyl alcohol would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Arita et al. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejection of Claims 1 – 10, of record on page 2 of the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn.

Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 11 – 13 and 16 – 20 as being anticipated by Speer et al. (U.S. Patent No. 5,350,622) and 35 U.S.C. 103(a) rejection of Claims 14 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speer et al (U.S. Patent No. 5,350,622 in view of Arita et al (U.S. Patent No. 4,652,490) as being unpatentable over Speer et al (U.S. Patent No. 5,350,622 in view of Arita et al (U.S. Patent No. 4,652,490), of record on page 2 of the previous Action, have been considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 3 of Paper No. 8, that Claims 11 – 20 overcome the prior art of record. However, the phrase 'wherein all of the layers of the film are oriented' does not appear in the specification. The orientation of a film is discussed on page 17, but no broader language is used; the amendment therefore constitutes new matter. The new 35 U.S.C. 112 first paragraph rejection of Claims 11 – 20 above is directed to Claims 11 – 20.

Applicant also argues, on page 4, that the rejection is improper because Speer et al disclose polyamides which do not have the claimed melting point of 175 degrees Celsius. However, Speer et al also discloses nylon 6, which does have a melting point of 175 degrees Celsius (column 8, lines 5 – 10).

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Applicant also argues, on page 4, that Speer et al disclose barrier layer materials other than the claimed barrier material, ethylene – vinyl alcohol. However, Speer et al. clearly disclose ethylene vinyl alcohol (column 7, lines 29 – 46).

Applicant also argues, on page 5, that Speer et al does not only disclose heat shrinkable films, and does not only disclose vinylidene chloride as the barrier layer. However as stated above, films which are heat shrinkable and barrier layers comprising vinylidene chloride are clearly taught by Speer et al.

Applicant also argues, on page 6, that Speer et al do not disclose tubing which is seamless. However, Speer et al do not disclose a tubing having seams; the claimed aspect of the tubing being ‘seamless’ therefore reads on Speer et al.

Applicant also argues, on page 6, that Arita et al is not made by the same process as the claimed invention; Arita et al teach the blending of polyamide with ethylene – vinyl alcohol, Applicant argues, for the same purpose as the claimed invention. However, as stated above, Arita et al is a heat – shrinkable film in which polyamide is blended with ethylene – vinyl alcohol. Furthermore, the scope of the claims falls within the limitations of Speer et al and Arita et al as discussed above. The method of making the film (product – by – process) is given little patentable weight. Applicant would need to demonstrate, by verified showing, the unexpected advantages accruing from the method of making.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The

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examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson

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[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

2/4/03